MARK P. SIEVERS
ATTORNEY-AT-LAW
(NOT ADMITTED IN D.C.)

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

April 18, 1996

VIA COURIER

William F. Caton, Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

Re: Notice of Ex Parte Contact by MFS Communications Company, Inc., in CC Docket Nos. 91-141, 93-162 & 92-93

Dear Mr. Caton:

In accordance with §§1.1206(a)(2) of the Commission's Rules, I am filing this letter as notice of an ex parte communication, the attached paper titled "Determining the Jurisdiction for Physical Collocation, Supplement to Ex parte of April 11, 1996 regarding the Application of the Ten-Percent Rule." It is in response to questions from Sherille Ismail, a Commission staff member.

If you have any questions or need additional information, please call me at 424-7872.

Sincerely,

Mark P. Sievers

Enclosures

cc: Regina Keeney
James Schlichtling
Richard Welch
Robert McCausland
Paul D'Ari
Claudia Fox
Sherille Ismail
ITS

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List ABCDE

3000 K STREET, N.W. ■ SUITE 300
WASHINGTON, D.C. 20007-5116
(202)424-7500 ■ FACSIMILE (202)424-7643

DETERMINING THE JURISDICTION FOR PHYSICAL COLLOCATION

Supplement to *Ex Parte* of April 10, 1996 Regarding the Application of the Ten-Percent Rule

MFS Communications Company, Inc.

MFS continues to endorse the approaches that it cited in its recent ex parte for determining physical collocation jurisdiction (a copy of that *ex parte* is attached). In the instant *ex parte* filing, MFS further emphasizes the need for process simplicity and consistency between interstate and intrastate interconnection rates. Specifically, as MFS demonstrates in this filing, substantial differences in rate structure, rate levels and rate application currently exist between interstate and intrastate physical collocation tariffs. These differences are clearly contrary to the Telecommunications Act of 1996 which requires cost-based rates and contribute to the need for jurisdictional determination processes identified by MFS in its recent *ex parte*. To the extent that such disparities continue to exist in local exchange carrier's ("LECs'") interconnection tariff rates, the need exists for a jurisdictional determination process that incorporates the 10% rule as previously proposed by MFS.

Attachment A reflects "real-life" examples of rate disparities between the interstate and intrastate collocation tariffs of NYNEX in two states. In the Massachusetts example, MFS' collocation costs are nearly doubled when the state tariff applies for the exact same items (space, power, cable space, conduit and racking). MF continues to see such disparities as inconsistent with the requirements of the Telecommunications Act of 1996 which makes clear that all such rates must be cost-based. Since NANNIES had filed those rates with the Commission and had argued that those rates are cost-based for these interstate services, then clearly the rates that it has filed in its state tariffs, which are higher than those in its interstate tariff, exceed their costs and are therefore in violation of the express language of the Act.

MF seeks the application of the 10% rule to the Master Factor approach described in its previous *ex parte* to avoid making the bill-validation process totally unrealistic and unmanageable. Space used for collocation accommodations, for example, should be considered either interstate or intrastate in nature by application of the 10% rule. It makes little economic and policy sense to apply PAU-like factors to items such as space. Since accommodations, like space, power, conduit and racking, do not have telecommunications traffic associated with them, any attempt to assign a jurisdiction to such accommodations must imply jurisdiction from some other source, as MF has done with its Master Factor calculations and as NANNIES does in its collocation tariff. However, because the jurisdiction is implied from traffic data, the precision of the jurisdictional assignment is low, at best. MF believes that its Master Factor approach provides an acceptable "audit trail" or justification for claiming that at least 10% of usage of physical collocation accommodations was interstate. For example, the Master Factor approach, or the approach employed by NANNIES in its tariffs are not so precise that one could determine and objectively support that exactly 64% of collocation space was interstate and 36% was intrastate.

The extent to which the bill-validation process would become unmanageable is recognizable from the substantial rate-structure, rate-level and rate-application disparities reflected on Attachment B. If interstate and intrastate rates for these services were pro-rated, no collocator could be assured that its total billed amounts do not substantially exceed those authorized in LECs' tariffs without going through additional time-consuming and complex steps prior to the payment due dates. LECs with higher intrastate rates would have an economic incentive to engage in audits and "fishing expeditions" to prove that the PAU was higher than reported in order to maximize revenues and collocators would have an economic incentive to minimize their PAU. Obviously, neither of these incentives have any relationship to the underlying economic costs or to the services provided to customers. If a 10% rule were applied using a Master Factor approach, such incentives would be eliminated to the extent that the Master Factor was clearly above or below 10% yet the Master Factor would provide an objective basis for concluding that physical collocation accommodations ought to be considered interstate or intrastate.

The use of a 10% rule also minimizes billing errors and reduces bill verification costs, since it is easier to audit a bill that is either entirely interstate or intrastate in nature. The importance of bill validation cannot be understated. For example, MF had recently identified LEC overcharges of $7,300.00 per month for a single collocation Central Office ("CO") and $5,600.00 per month in another collocation CO, a substantial amount of money to a relatively small company. While MF does not believe that such overcharges are always intentional, the motives of some LECs are often in question, particularly when they are dealing with new entrants competing for the business for which the LECs have had a long and exclusive franchise. At the same time, such new entrants do not have the administrative resources that the large LECs have to perform such auditing and bill validation functions. Obviously, the costs of auditing and verifying bills are economically wasted expenses as they are unrelated to the services provided to end-user customers. Therefore, a process that minimizes billing errors and validation costs reduces economically inefficient expenditures and promotes competition by reducing the costs of new entrants.

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ATTACHMENT A

Jurisdictional Impact Analysis - NYNEX Territory

STATE	CO	ELEMENT	QUANTITY	FCC TARIFF TOTAL	STATE TARIFF TOTAL	DIFFERENCE PER MONTH
MA	BURLABE	Equipment Space Cable Space Conduit/Racking DC Power	100 1 384 30	$ 265.00 $ 45.60 $ 88.32 $ 201.90	$ 750.00 (included w/conduit) $ 30.72 $ 395.10	
		CO TOTALS:		$ 600.82	$ 1,175.82	**$575.00**
NY	NYCMNY13	Equipment Space Cable Space Conduit/Racking DC Power	100 1 384 60	$ 348.00 $ 45.60 $ 83.95 $ 403.80	$ 271.44 $ 443.70 $ 162.25 $ 344.00	
		CO TOTALS:		$ 881.35	$ 1,221.39	**$340.04**
NY	NYCMNY56	Equipment Space Cable Space Conduit/Racking DC Power	120 1 390 60	$ 570.00 $ 45.60 $ 89.70 $ 403.80	$ 445.60 $ 443.70 $ 178.30 $ 412.80	
		CO TOTALS:		$ 1,109.10	$ 1,480.40	**$371.30**

NOTES:
1) All annual amounts have been converted to monthly amounts; rounding approaches effect results.
2) These examples reflect only the initial spaces as billed; the impact increases as the arrangements are expanded.

ATTACHMENT B

Jurisdictional Rate Structure Comparison - NYNEX Territory

	CONSTRUCTION	EQUIP. SPACE	CABLE SP.	CONDUIT/RK.	DC POWER
FCC TARIFF RATE STRUCTURE	Flat NRC for 100 Sq. Ft.; Per Sq. Ft. for Add'l. Space	Monthly Per Square Foot by CO	Monthly Per Foot	Monthly Per Node	Monthly Per Amp
FCC TARIFF RATES:	($54,900; $274.50)	($1.92 to $4.75)	($0.23)	($45.60)	($6.73)
NY STATE TARIFF RATE STRUCTURE	NRC Application Fee Plus ICB	Annual Per Square Foot	Annual Per Fiber Cable	Annual Per Foot	Annual Per Square Foot
NY STATE TARIFF RATES:	($7,500 Plus ICB)	ICB	ICB	ICB	ICB
MA STATE TARIFF RATE STRUCTURE	NRC, Flat Rate Per CO Plus 3 Separate Per-Hour Elements	Annual Per Square Foot	Ann. Per Ft. Per Duct.- Combined with Conduit	Combined with Cable Space	Annual Per Amp
MA STATE TARIFF RATES:	($35,000 Plus Other Elements)	$90.00	$0.95	(Combined)	$158.00